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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77589558
Applicant	Adventist Health System/Sunbelt, Inc.
Applied for Mark	HEALTH VILLAGE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Application for "HEALTH VILLAGE")	Law Office 108
)	
Serial No.: 77/589558)	Trademark Attorney
)	Heather A. Sapp
Filed: October 9, 2008)	
)	
Applicant: Adventist Health System/Sunbelt, Inc.)	
)	

APPLICANT'S REPLY BRIEF

The Examining Attorney's Response Brief contends that a trademark term providing "some information" about the goods or services should be considered merely descriptive and disclaimed. To support her proposition, the Examining Attorney cites In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 U.S.P.Q. 2d 1420, 1422 (Fed. Cir. 2005). In re Steelbuilding.com, however, does not use the phrase "some information" and the case does not stand for that general proposition. Obviously, terms considered suggestive will likely provide some information about the goods or services; otherwise they would not be suggestive.

"A mark is merely descriptive if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used." Id. at 1297 (internal quotations omitted)(emphasis added). "Health" does not immediately convey knowledge of the qualities or characteristics of Applicant's listed services. "Health" is a condition or outcome to be achieved. If only related to "health" in some fashion, Applicant's use of the term "HEALTH" is all the more suggestive, not merely descriptive.

The Examining Attorney argues that the term "HEALTH" is merely descriptive because "[A]pplicant's educational and fitness-type services feature and/or are for the purpose of health." To the contrary, the inclusion of many goods or services within a broad term, such as

“HEALTH,” does not make the term descriptive of all such goods or services. In re Hutchinson Tech. Inc., 7 U.S.P.Q.2d 1490 (Fed. Cir. 1988)(using the term “technology” in connection with computer products does not mean the term is descriptive of those products). Although the term “HEALTH” gives some indication about the nature of the services to be sold, the term does not immediately convey information about the qualities or characteristics of the services to be considered merely descriptive.

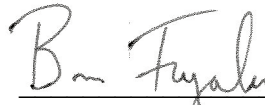
Furthermore, the Examining Attorney misconstrues Applicant’s argument that the term “HEALTH” has multiple meanings by theorizing that the only terms that could ever be descriptive under Applicant’s argument are words that only have one accepted definition. Despite the Examining Attorney’s statements, Applicant’s contention is that certain terms such as “health,” “technology,” “intelligent,” and “emotional,” are expansive and do not convey an immediate idea of the qualities or characteristics of the related goods or services. Simply put, the term “HEALTH” is a very broad term that connotes many categories of physical, mental, and social attributes without conveying an immediate idea of the qualities or characteristics of any one of the attributes with respect to Applicant’s listed services.

Finally, Applicant agrees with the Examining Attorney that prior decisions and action by other trademark examining attorneys in registering different marks have little evidentiary value and are not binding upon the U.S. Patent and Trademark Office. As such, Applicant argues that it is inconsistent for the Examining Attorney to also argue that the third party registrations she cited are probative evidence on the issue of descriptiveness. This Application stands on its own merits and should be decided without review of third party registrations.

For the reasons set forth above and in the previously filed Brief for Appellant, Applicant submits that that the Examining Attorney did not meet her burden of proof that the term

“HEALTH” in Applicant’s mark is merely descriptive, because the term is, in fact, suggestive. Accordingly, Applicant respectfully requests the Trademark Trial and Appeal Board to reverse the Examining Attorney’s decision requiring a disclaimer of the term “HEALTH” prior to registration of Applicant’s mark.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "B. K. Furgala", written in dark ink.

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